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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,082	10/30/2002	Daniel Galbraith	9013.43	9280

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EXAMINER

FOLEY, SHANON A

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 08/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,082

Applicant(s)

GALBRAITH ET AL.

Examiner

Shanon Foley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Please note that claims 4, 5 and 10 (referencing peptides D, E, F, G, H and J) are currently not in sequence compliance according to 37 CFR § 1.821 (a)-(d) and MPEP § 2422. A SEQ ID NO must identify amino acid sequences comprising four or more amino acids and ten or more nucleic acids. This rule also applies to sequences recited in the specification and the drawings.

Please also note that reference in a claim to a Figure renders the claim unclear. In order to avoid a rejection under 35 U.S.C. 112, second paragraph, it is suggested that applicant amend claims 3 and 7-11.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group A, claim(s) 1, 16, 18 and claim 19 (in -part, such that claim 19 is drawn to diagnosis using the polypeptide fragment). This group is drawn to a PeERV polypeptide fragment and the first method of using this fragment for the detection of PoERV antibodies in a sample.

Group B, claim(s) 1, 2 and 12, drawn to a PoERV polypeptide fragment of GAG.

Group C, claim(s) 1, 3 and 12, drawn to a polypeptide fragment of a sequence shown in Figure 1.

Group D, claim(s) 1, 3, 4 and 12, drawn to a specific amino acid sequence.

Group E, claim(s) 1, 3, 5 and 12, drawn to a specific amino acid sequence.

Group F, claim(s) 1, 6 and 12, drawn to a polypeptide fragment of PoERV ENV.

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Group G, claim(s) 1, 6-8, and 12 drawn to a polypeptide fragment of a sequence shown in Figure 2.

Group H, claim(s) 1, 6-8 and 12, drawn to polypeptide fragment of a sequence shown in Figure 3.

Group I, claim(s) 1, 6, 7, 9, 11 and 12, drawn to a polypeptide fragment comprising a conserved region of a sequence shown in Figure 2.

Group J, claim(s) 1, 6, 7, 9, 11 and 12, drawn to a polypeptide fragment comprising a conserved region of a sequence shown in Figure 3.

Group K, claim(s) 1, 6, 7, 9, 10 and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide D.

Group L, claim(s) 1, 6, 7, 9, 10, and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide E.

Group M, claim(s) 1, 6, 7, 9, 10, and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide F.

Group N, claim(s) 1, 6, 7, 9, 10, and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide G.

Group O, claim(s) 1, 6, 7, 9, 10 and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide H.

Group P, claim(s) 1, 6, 7, 9, 10 and 12, drawn to a polypeptide fragment comprising the sequence of polypeptide J.

Please note that it cannot be immediately determined whether the polypeptides D, E, F, G, H and J (recited in claim 10) also comprise conserved and non-conserved regions of the sequences depicted in Figure 3. If so, claim 11 will be rejoined with the polypeptide fragments of Groups K-P that have this feature.

Group Q, claim(s) 13-15, 17 and 19 (in-part, drawn to an antiserum specific to a PoERV fragment for diagnosis).

Group R, claim(s) 19, drawn to use of an antibody for therapy.

Group S, claim(s) 19, drawn to the use of a polypeptide fragment for therapy.

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The inventions listed as Groups A-S do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of Group A is defined as a polypeptide fragment that has PoERV-specific antigenic and immunogenic activity. Denner (Annals of the New York Academy of Sciences. 1998; 862: 75-86) teach immunosuppressive peptide fragments corresponding to a conservative domain common to different retroviruses, including PERVs. Since Group A fails to define over the prior art, any subsequent invention that does not share this special technical feature, lacks unity of invention.

The special technical features defining Groups B-P are drawn to different products of the particular fragments of the PoERV polypeptides recited in the claims, respectively. These inventions lack unity of invention with each other and Group A because the special technical feature defined by the structural elements of each group is not shared.

The special technical feature of Group Q is drawn to a seventeenth product, antiserum. This Group does not share the same structure or functional features that define the inventions of Groups A-P.

The special technical feature of Group R is drawn to a second method of using the seventeenth product.

The special technical feature of Group S is drawn to a second method of using the first product.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).


Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (571) 272-0898. The examiner can normally be reached on M-F 6:00 AM - 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shanon Foley
Primary Examiner
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